

THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon

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Employment

To sustain a claim for punitive damages, employee must establish more than intentional discrimination under a disparate treatment theory. Judge Malcolm Marsh granted a defense motion for summary judgment in a class action filed by the EEOC on behalf of women who were hired by a long haul trucking company and then delayed getting onto the payroll due to a company policy that required new trainees to train only with members of the same sex. Plaintiffs argued that the policy had the effect of delaying new female hires by 6-8 weeks. The defendant and the EEOC had entered into a consent decree as to liability and the company had agreed to change its policy. However, the issue of whether the company should nevertheless be liable for punitive damages remained unresolved.

The evidence submitted indicated that the company had adopted the policy to avoid exposure to sexual harassment claims, to protect employee's privacy rights and to encourage females to apply on the theory that women would be less intimidated training with other women. The EEOC argued that the policy evinced sexual stereotyping and that defendant's failure to investigate alternatives constituted

reckless indifference to plaintiff's Title VII rights.

Judge Marsh held that the plaintiffs' evidence failed to meet either the egregious misconduct or reckless disregard standard required under Title VII to sustain a punitive damage claim. Surveying several Circuit decisions, the court found that the employer's conduct was at best, negligent and that the proof was insufficient to create a jury question. EEOC v. Swift Transportation Co., CV 97-965-MA (Opinion, April 14, 1999 - 15 pages).

Plaintiffs' Counsel: Kathryn Olson
Defense Counsel: Edward McGlone

7 Judge Ancer Haggerty denied a defense motion for summary judgment in an action filed by a former firefighter who claimed that he had been subjected to a hostile work environment and discharged due to his national origin (Russia) and his religion (Christian "Old Believer"). The plaintiff submitted evidence that the fire Chief had referred to him as "Dumb Russian" and made other, similar derogatory comments in the workplace. The Chief had also asked the fire department's chaplain to conduct an investigation into plaintiff's religious beliefs to determine if they were interfering with plaintiff's

ability to make decisions.

Defendants sought summary judgment on grounds that the Chief claimed not to have been aware of plaintiff's national origin or religion, but such assertions were belied by other evidence in the record. The Fire District also claimed that plaintiff was terminated due to state wide budget cuts. However, plaintiff's position was subsequently filled by part-time employees and plaintiff proffered an affidavit from a City Financial Manager who reviewed the Fire District's budget and determined that there were alternatives to the lay-offs. Skorohodov v. Woodburn Fire Dist., CV 98-510-HA (Opinion, April, 1999 - 9 pages).

Plaintiff's Counsel: Brad Avakian
Defense counsel: Peter Mersereau

7 Judge Stewart held that a plaintiff could not maintain an action against the Oregon Dept of Education (a state agency) for violation of ORS 659.030 (Oregon's Title VII equivalent) in federal court because of the 11th Amendment. Judge Stewart's holding was consistent with earlier rulings by Judges Jones and Haggerty. Judge Stewart reasoned that just because Congress abrogated states' 11th Amendment immunity to Title VII claims did not mean that Congress

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abrogated that immunity to analogous state statutes. Judge Stewart then found that Oregon had not waived its 11th Amendment immunity to ORS 659.030 claims. Evans v. Oregon Dept. Of Education, CV 99-54-ST (Opinion, April 13, 1999 - 5 pages).

Habeas Corpus

Judge Ancer Haggerty held that the 1-year filing deadline for habeas corpus petitions under 28 U.S.C. § 2255 is triggered upon the denial of certiorari or the expiration of the 90-day period for filing a petition for certiorari. The court followed a Third Circuit decision and declined to follow a contrary decision from the Seventh Circuit. United States v. Rochelle, CR 92-429-HA (Order, April 13, 1999 - 6 pages).
Government Counsel: Neil Evans
Defendant: Pro Se

Criminal Law

A defendant charged with illegal re-entry was offered a "fast-track" 30 month plea agreement. Once the government discovered that the defendant had numerous prior drug related convictions and one prior "fast-track" illegal re-entry conviction, it withdrew its offer. Defendant then moved to dismiss the indictment on grounds that the government's withdrawal of the plea offer violated his due process rights. Judge Garr King denied the motion, noting the absence of any evidence to suggest that similarly situated individuals were treated any differently under the Prosecutor's

policy guidelines for illegal re-entry cases. The court also declined to exercise its supervisory power to force the government to re-offer the withdrawn plea bargain. United States v. Perez-Quintas, CR No. 98-455-KI (Opinion, April 13, 1999 - 7 pages).

Government Counsel: Gary Sussman

Defense Counsel: Michael Levine

Immunity

Darrell and Vicki Lee filed an action against members of the Oregon Racing Commission alleging multiple constitutional violations and state law torts. The action stemmed from the Oregon Racing Commission's suspension of the Lees' employee licenses and exclusion of the Lees from Portland Meadows. At the time of the suspension and exclusion orders, Darrell Lee owned half of the stock of The New Portland Meadows, which conducted horse racing at Portland Meadows. After two rounds of summary judgment motions, the ORC commissioners moved for summary judgment on all remaining claims alleging absolute immunity. Judge Stewart granted the motion.

The ORC commissioners argued that they were acting in a quasi-judicial capacity when they enacted and enforced exclusion orders against the Lees. Judge Stewart agreed, finding that under United States Supreme Court precedent, the ORC commissioners were entitled to absolute immunity. First, public policy weighed in favor

of absolute immunity because the ORC commissioners had the same need as a judge to discharge their duties free from harassment and intimidation. Second, the ORC commissioners, which conducted its hearing in accordance with the Oregon APA, acted with adequate procedural safeguards to warrant absolute immunity because: the commissioners are free from political influence, they take into account prior agency precedent, ORC hearings are adversarial, and errors are correctable on appeal. Lee v. Walters, CV 95-274 (Opinion, April 6, 1999 - 14 pages).

Plaintiffs' Attorneys: Spencer Neal
Defense Counsel: Barbara Gazeley

Procedure

A plaintiff who purchased a carnival ride ("Extreme Swing") from the defendant filed an action seeking damages for untimely delivery. Plaintiff named both the company and its principal as defendants. The individual defendant moved to dismiss on grounds that plaintiff had failed to plead an alter ego theory of liability.

Judge Ancer Haggerty agreed. The court noted that while Fed. R. Civ. P. 8 provides for liberal notice pleading, plaintiff's complaint failed to provide even minimal explanation for why the individual had been named. Plaintiff's claim that the individual defendant treated the company as an alter ego was insufficient. D & D Adventures, Inc. v. Ultimate Industries, Inc., CV

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98-408-HA (Opinion, April, 1999 - 4 pages).

Plaintiff's Counsel: Jeff Misley

Defense Counsel: Brooks Cooper

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